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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/694,927	10/24/2000	Victor T. Huang	8863.73US01	1712

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/694,927

Applicant(s)

HUANG ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 7, 9 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 9, and 25-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

Claims 3, 29 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is vague and indefinite. In claim 1, applicant recites the "sweetener consists of"; however, in claim 3, applicant recites the "sweetener comprises ". It is not clear what is intended because in one instance, the closed language is used and in another instance, the open language is used. Claim 3 depends from claim 1.

In claim 29, the language "the flat wafer of claim 28" is unclear because claim 28 is directed to a "frozen food product".

In claim 32, the reference to "the baked good" is confusing because it is not known what baked good applicant is referring to.

Claims 1-3, 7,9, 25-26, 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti et al (WO 00/13512).

Conti et al disclose baked wafers made from a batter comprising flour, water and a sweetener. The sweetener comprises sucrose wherein all or part of the sucrose may be replaced by a reducing sugar. For example, 15-80% of the sucrose is replaced with a reducing sugar which can be corn syrup. The sugar wafers are baked using conventional methods such as molding cone, baking plates etc.. The sugar wafers may have a variety of shapes such as flat sheets, cup, cone, tubular. They may be used in a variety of confectionery products together with confectionery materials such as ice creams, chocolate or other fatty materials. Other ingredients such as lecithin, salt, emulsifier, egg etc.. can be added to the batter

Conti et al do not the modulus as claimed, the moisture content of the baked wafer, the DE of the corn syrup, the wafer in the form of a cookie, the addition of shortening and mixing of the baked good in the frozen dessert composition.

The limitation of "the baked wafer is molded into a desired shape prior to baking" does not define the claimed product over the prior art because it is a process limitation and the claims are directed to a final baked product. In any event, Conti et al disclose the wafer is baked using a molding cone; thus, a shape is formed before baking. As to the modulus, the Conti et al product contains the same type of sweetener claimed, the proportion of sweetener fall within the range claimed and the sweetener is used in the same type of product as claimed. Thus, it is obvious the product will have the same modulus as claimed. It is also obvious the wafer has the same moisture content as claimed because it is the same type of product. It would have been obvious to one skilled in the art to use corn syrup having a low DE such as the DE claimed when it is desired to have a low degree of sweetness. Higher DE gives a sweeter product. It would have been obvious to make the wafer to have a cookie shape because Conti et al teach the wafer may have a variety of shapes. It would also have been obvious to mix baked good such as cookies or the sugar wafer itself into the frozen desert to obtain products having different taste, flavor and texture. This is notoriously well known in the art; for example, oreo cookies is mixed in with ice cream to obtain oreo ice cream or cookies is mixed in with ice cream to obtain cookie-cream ice cream. Conti et al disclose emulsifier can be added; thus, it would have been obvious to add shortening as

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the emulsifier or it would have been obvious to add shortening when desiring to increase the fat content of the product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.

*L. Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
Group 1702